

Application No. 10/675,122

Reply to Office Action of April 20, 2006

DRAWINGS

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With regard to the Drawings, the Office Action states, "The drawings submitted on September 30, 2003 are acceptable for examination proceedings only. The drawings are difficult to read."

In response, the Applicant is unsure of "what is meant by "The drawings are difficult to read," and accordingly, request further clarification.

Notwithstanding, the Applicant respectfully submits a new set of drawings in compliance with 37 CFR 1.21(d), which are filed herewith. The Applicant respectfully asserts that no new matter has been introduced.

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REMARKS AND ARGUMENTS

STATUS OF CLAIMS

The present application includes pending claims 1-32. Claims 1, 11 and 21 are Independent Claims. Claims 2-10, 12-20, 22-32 are dependent Claims.

Claim Rejections Based On 35 USC §101

Claims 1-32 are rejected under 35 U.S.C. § 101, because the Claims are allegedly directed towards non-statutory subject matter. Specifically, the Examiner is taking the position that the Claims are not directed towards the final result that is "useful, tangible and concrete."

Claim Rejections Based on 35 USC §102(e)

Claims 1-32 are rejected under 35 USC § 102(e) as allegedly being anticipated by Dougall et al, hereinafter Dougall, United States Publication No. 20030093484A1.

The Applicant respectfully traverses these rejections.

The Applicant respectfully submits the Claims are directed to statutory subject matter. Furthermore, the Applicant respectfully submits that the claims define patentable subject matter. Accordingly, the Applicant respectfully traverse all of these rejections and requests reconsideration of the claims in view of the following amendments and/or remarks.

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ALL REASONS AND BASES FOR REJECTING CLAIMS SET FORTH IN OFFICE ACTION

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth "all reasons and bases" for rejecting the claims.

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REJECTION TO THE CLAIMS BASED ON 35 USC §101
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With regard to Claims 1-32, the Office Action states:

"Claims 1-32 are rejected under 35 U.S.C. 101 because the claims are directed to non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete. (See State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02). According to the New Guidelines of October 26, 2005, which states that "A claim limited to a machine or manufacture, which has a practical application, is statutory. In most cases a claim to a specific machine or manufacture will have a practical application. See Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557)... a specific machine to produce a useful, concrete, and tangible result and State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02). Examiner requests Applicant to include in Applicants claimed limitations (in all the claims) the following: What is the practical application? What is the result? What is final result that is concrete, useful and tangible? Because the "practical application, result, concrete, useful and tangible" limitations are not claimed in Applicant's claims, Examiner believes that the above listed claims are nonstatutory."

THE APPLICANT RESPECTFULLY SUBMITS THAT THE REJECTION UNDER 35 USC §101 IS IMPROPER SINCE THE APPLICANT'S CLAIMED INVENTION PRODUCES A USEFUL, TANGIBLE AND CONCRETE RESULT

The claimed invention as a whole must be useful and accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96 (1966)); In re Fisher, 421 F.3d 1365, 76

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USPQ2d 1225 (Fed. Cir. 2005); In re Ziegler, 992 F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)). Ziegler, 992 F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

The Scope of 35 USC §101

Title 35 USC § 101 states,

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The Supreme Court held, Congress chose the expansive language of 35 U.S.C. § 101 so as to include "anything under the sun that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980). In *Chakrabarty*, 447 U.S. at 308-309, 206 USPQ at 197, the court stated:

In choosing such expansive terms as "manufacture" and "composition of matter," modified by the comprehensive "any," Congress plainly contemplated that the patent laws would be given wide scope. The relevant legislative history also supports a broad construction. The Patent Act of 1793, authored by Thomas Jefferson, defined statutory subject matter as "any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement [thereof]." Act of Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318. The Act embodied Jefferson's philosophy that "ingenuity should receive a liberal encouragement." *V* Writings of Thomas Jefferson, at 75-76. See *Graham v. John Deere Co.*, 383 U.S. 1, 7-10 (148 USPQ 459, 462-464) (1966). Subsequent patent statutes in 1836, 1870, and 1874 employed this same broad language. In 1952, when the patent laws were recodified, Congress replaced the word "art" with "process," but otherwise left Jefferson's language intact. The Committee

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Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man." S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H.R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952). [Footnote omitted]

This perspective has been embraced by the Federal Circuit:

The plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112. The use of the expansive term "any" in section 101 represents Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in section 101 and the other parts of Title 35.... Thus, it is improper to read into section 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended such limitations. See *Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556.

Four Judicial Exceptions

Title 35 U.S.C. § 101 defines four categories of inventions that Congress deemed to be the appropriate subject matter of a patent: processes, machines, manufactures and compositions of matter. The latter three categories define "things" or "products" while the first category defines "actions" (i.e., inventions that consist of a series of steps or acts to be performed). See 35 U.S.C. 100(b) ("The term 'process' means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.").

Federal courts have held that 35 U.S.C. § 101 does have certain limits. First, the phrase "anything under the sun that is made by man" is limited by the text of 35 U.S.C. § 101, meaning that one may only patent something that is a machine, manufacture,

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composition of matter or a process. See, e.g., *Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556; *In re Warmerdam*, 33 F.3d 1354, 1358, 31 USPQ2d 1754, 1757 (Fed. Cir. 1994). Second, 35 U.S.C. § 101 requires that the subject matter sought to be patented be a "useful" invention. Accordingly, a complete definition of the scope of 35 U.S.C. § 101, reflecting Congressional intent, is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent.

The subject matter courts have found to be outside of, or exceptions to, the four statutory categories of invention is limited to abstract ideas, laws of nature and natural phenomena. While this is easily stated, determining whether an applicant is seeking to patent an abstract idea, a law of nature or a natural phenomenon has proven to be challenging. These three exclusions recognize that subject matter that is not a practical application or use of an idea, a law of nature or a natural phenomenon is not patentable. See, e.g., *Rubber-Tip Pencil Co. v. Howard*, 87 U.S. (20 Wall.) 498, 507 (1874) ("idea of itself is not patentable, but a new device by which it may be made practically useful is"); *Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U.S. 86, 94, 40 USPQ 199, 202 (1939) ("While a scientific truth, or the mathematical expression of it, is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be."); *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759 ("steps of 'locating' a medial axis, and 'creating' a bubble hierarchy . . . describe nothing more than the manipulation of basic mathematical constructs, the paradigmatic 'abstract idea'").

The courts have also held that a claim may not preempt ideas, laws of nature or natural phenomena. The concern over preemption was expressed as early as 1852. See *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175 (1852) ("A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right."); *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be nonstatutory subject matter). Accordingly, one may not patent every "substantial practical application" of an idea, law of nature or natural phenomena

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because such a patent "in practical effect be a patent on the [idea, law of nature or natural phenomena] itself." See *Gottschalk v. Benson*, 409 U.S. 63, 71-72, 175 USPQ 673, 676 (1972).

The scope of 35 U.S.C. § 101 is the same regardless of the form or category of invention in which a particular claim is drafted. See *AT&T*, 172 F.3d at 1357, 50 USPQ2d at 1451. See also *State Street*, 149 F.3d at 1375, 47 USPQ2d at 1602 wherein the Federal Circuit explained

The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to -- process, machine, manufacture, or composition of matter-- [provided the subject matter falls into at least one category of statutory subject matter] but rather on the essential characteristics of the subject matter, in particular, its practical utility.

For example, a claimed invention may be a combination of devices that appear to be directed to a machine and one or more steps of the functions performed by the machine. Such instances of mixed attributes, although potentially confusing as to which category of patentable subject matter it belongs in, does not affect the analysis to be performed by the examiner. Note that an apparatus claim with process steps is not classified as a "hybrid" claim; instead, it is simply an apparatus claim including functional limitations. See, e.g., *R.A.C.C. Indus. v. Stun-Tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998).

The burden is on the USPTO to set forth a *prima facie* case of unpatentability. Therefore if the examiner determines that it is more likely than not that the claimed subject matter falls outside all of the statutory categories, the examiner must provide an explanation. For example, a claim reciting only a musical composition, literary work, compilation of data, or legal document (e.g., an insurance policy) per se does not appear to be a process, machine, manufacture, or composition of matter. If the examiner can establish a *prima facie* case that a claim does not fall into a statutory category, that does not preclude complete examination of the application for satisfaction of all other conditions of patentability. The examiner must further continue

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with the statutory subject matter analysis as set forth below. Also, the examiner must still examine the claims for compliance with 35 U.S.C. §§ 102, 103, and 112.

If the invention as set forth in the written description is statutory, but the claims define subject matter that is not, the deficiency can be corrected by an appropriate amendment of the claims. In such a case, USPTO personnel should reject the claims drawn to nonstatutory subject matter under 35 U.S.C. § 101, but identify the features of the invention that would render the claimed subject matter statutory if recited in the claim.

Determining whether the claim falls within one of the four enumerated categories of patentable subject matter recited in 35 U.S.C. § 101 (process, machine, manufacture or composition of matter) does not end the analysis because claims directed to nothing more than abstract ideas (such as mathematical algorithms), natural phenomena, and laws of nature are not eligible and therefore are excluded from patent protection. *Diehr*, 450 U.S. at 185, 209 USPQ at 7; accord, e.g., *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197; *Parker v. Flook*, 437 U.S. 584, 589, 198 USPQ 193, 197 (1978); *Benson*, 409 U.S. at 67-68, 175 USPQ at 675; *Funk*, 333 U.S. at 130, 76 USPQ at 281. "A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right." *Le Roy*, 55 U.S. (14 How.) at 175. Instead, such "manifestations of laws of nature" are "part of the storehouse of knowledge," "free to all men and reserved exclusively to none." *Funk*, 333 U.S. at 130, 76 USPQ at 281.

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

Determine Whether the Claimed Invention Covers Either a § 101 Judicial Exception or a Practical Application of a § 101 Judicial Exception

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An examiner must ascertain the scope of the claim to determine whether it covers either a § 101 judicial exception or a practical application of a § 101 judicial exception. The conclusion that a particular claim includes a § 101 judicial exception does not end the inquiry because "[i]t is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection." Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis in original); accord Flook, 437 U.S. at 590, 198 USPQ at 197; Benson, 409 U.S. at 67, 175 USPQ at 675. Thus, "[w]hile a scientific truth, or the mathematical expression of it, is not a patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be." Diehr, 450 U.S. at 188, 209 USPQ at 8-9 (quoting Mackay, 306 U.S. at 94); see also *Coming v. Burden*, 56 U.S. (15 How.) 252, 268, 14 L.Ed. 683 (1854) ("It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . .").

Determine Whether the Claimed Invention is a Practical Application of an Abstract Idea, Law of Nature, or Natural Phenomenon (§ 101 Judicial Exceptions)

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. Diehr, 450 U.S. at 187, 209 USPQ at 8 ("application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection."); Benson, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it "has no substantial practical application").

To satisfy section 101 requirements, the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways: the claimed invention "transforms" an article or physical object to a different state or thing; and the claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

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Practical Application by Physical Transformation

The examiner first shall review the claim and determine if it provides a transformation or reduction of an article to a different state or thing. If the examiner finds such a transformation or reduction, the examiner shall end the inquiry and find that the claim meets the statutory requirement of 35 U.S.C. § 101. If the examiner does not find such a transformation or reduction, the examiner has not determined as a final matter that the claim is non-statutory. The examiner must proceed in further inquiry.

Practical Application That Produces A Useful, Concrete, And Tangible Result

For eligibility analysis, physical transformation "is not an invariable requirement, but merely one example of how a mathematical algorithm [or law of nature] may bring about a useful application." AT&T, 172 F.3d at 1358-59, 50 USPQ2d at 1452. If the examiner determines that the claim does not entail the transformation of an article, then the examiner shall review the claim to determine if the claim provides a practical application that produces a useful, tangible and concrete result. In determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible and concrete." The claim must be examined to see if it includes anything more than a § 101 judicial exception. If the claim is directed to a practical application of the § 101 judicial exception producing a result tied to the physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S.C. § 101. If the examiner does not find such a practical application, the examiner has determined that the claim is nonstatutory.

In determining whether a claim provides a practical application that produces a useful, tangible, and concrete result, the examiner should consider and weigh the following factors:

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Useful Result

For an invention to be "useful" it must satisfy the utility requirement of section 101. The USPTO's official interpretation of the utility requirement provides that the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible. MPEP § 2107 and Fisher, 421 F.3d, 76 USPQ2d at 1230 (citing the Utility Guidelines with approval for interpretation of "specific" and "substantial"). In addition, when the examiner has reason to believe that the claim is not for a practical application that produces a useful result, the claim should be rejected, thus requiring the applicant to distinguish the claim from the three § 101 judicial exceptions to patentable subject matter by specifically reciting in the claim the practical application. In such cases, statements in the specification describing a practical application may not be sufficient to satisfy the requirements for section 101 with respect to the claimed invention. Likewise, a claim that can be read so broadly as to include statutory and nonstatutory subject matter must be amended to limit the claim to a practical application. In other words, if the specification discloses a practical application of a § 101 judicial exception, but the claim is broader than the disclosure such that it does not require a practical application, then the claim must be rejected.

Tangible Result

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a § 101 judicial exception, in that the process claim must set forth a practical application of that § 101 judicial exception to produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had "no substantial practical application."). "[A]n application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection," Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also Coming, 56 U.S. (15 How.) at 268, 14 L.Ed. 683 ("It is for the discovery or invention of some practical

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method or means of producing a beneficial result or effect, that a patent is granted . . ."). In other words, the opposite meaning of "tangible" is "abstract."

Concrete Result

Another consideration is whether the invention produces a "concrete" result. **Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again.** In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is "irreproducible" claim should be rejected under section 101). The opposite of "concrete" is unrepeatable or unpredictable. Resolving this question is dependent on the level of skill in the art. For example, if the claimed invention is for a process which requires a particular skill, to determine whether that process is substantially repeatable will necessarily require a determination of the level of skill of the ordinary artisan in that field. An appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection under 35 U.S.C. § 112, paragraph 1, where the invention cannot operate as intended without undue experimentation. See *infra*.

Establishing A Prima Facie Case

The examiner should review the totality of the evidence (e.g., the specification, claims, relevant prior art) before reaching a conclusion with regard to whether the claimed invention sets forth patent eligible subject matter. The examiner must weigh the determinations made above to reach a conclusion as to whether it is more likely than not that the claimed invention as a whole either falls outside of one of the enumerated statutory classes or within one of the exceptions to statutory subject matter. **"The examiner bears the initial burden ... of presenting a prima facie case of unpatentability."** In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **If the record as a whole suggests that it is more likely than not that the**

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claimed invention would be considered a practical application of an abstract idea, natural phenomenon, or law of nature, the examiner should not reject the claim.

After the examiner identifies and explains in the record the basis for why a claim is for an abstract idea with no practical application, then the burden shifts to the applicant to either amend the claim or make a showing of why the claim is eligible for patent protection. See, e.g., In re Brana, 51 F.3d 1560, 1566, 34 USPQ2d 1436, 1441 (Fed. Cir. 1995); see generally MPEP § 2107 (Utility Guidelines).

Regarding The Applicant's Claims 1-32, The Examiner Has Failed To Establish A Prima Facie Case Of Patentability

The Applicant respectfully asserts that the Examiner has not established a prima facie case of patentability since the Examiner has not identified and explained "the basis for why a claim is for an abstract idea with no practical application." Accordingly, the burden has not shifted to the Applicant to either amend the claim or make a showing of why the claim is eligible for patent protection. See, In re Brana, 51 F.3d 1560, 1566, 34 USPQ2d 1436, 1441 (Fed. Cir. 1995). See also, generally, MPEP § 2107.

The Applicant's Invention Produces Useful, Tangible And Concrete Results

The Applicant respectfully asserts that the disclosed and claimed invention produces useful, tangible and concrete results. The Applicant's invention provides utility that is (i) specific, (ii) substantial and (iii) credible. See MPEP § 2107 and Fisher, 421 F.3d, 76 USPQ2d at 1230. Each of Claims 1-32 provides a practical application that produces a useful result. Furthermore, the Applicant's disclosed and claimed invention clearly does not fall in the category of the § 101 Judicial exceptions. Accordingly, there is no need for the Applicant to distinguish the disclosed and/or claimed subject matter from the three § 101 judicial exceptions to patentable subject matter by specifically reciting in the claim the practical application.

With regard to tangible results, the Applicant respectfully asserts that the disclosed and claimed invention recites more than a § 101 judicial exception and that the claims specifically set forth a practical application to produce a real-world result.

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With regard to concrete results, since appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection under 35 U.S.C. § 112, paragraph 1, in instances where the invention cannot operate as intended without undue experimentation. Since no such rejection was received, the Applicant assumes that the invention provides useful results. Notwithstanding, the Applicant respectfully asserts that the disclosed and claimed invention provides useful results and the results are repeatable and predictable.

With regard to claim 1, the Applicant respectfully asserts that the method for porting information between locations in a communication network provides useful, tangible and concrete results since:

In Claims 1, 11 and 21, which are supported by the disclosure, media and corresponding meta data associated with the media may be stored on a storage unit coupled to a communication device at a first location; in instances where the storage unit is transferred to a second location and coupled to a second communication device at the second location, a visible channel guide comprising representations of the stored media on a television in the second location may be presented based on the meta data associated with the stored media on the storage unit; and in response to receiving a selection via the visible presented channel guide, displaying based on the meta data associated with the stored media on the transferred storage unit, at least one media file corresponding to the received selection on the television and/or a media player in the second location.

In Claims 2, 12 and 22, which are supported by the disclosure, the storage unit comprises a media processing unit.

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In Claims 3, 13 and 23, which are supported by the disclosure, the stored media at the first location is received via at least one of a wired and a wireless interface.

In Claims 4, 14 and 24, which are supported by the disclosure, the meta data information associated with the displayed at least one file is also visually displayed.

In Claims 5, 15 and 25, which are supported by the disclosure, at least a portion of stored media may be transferred from the storage unit to a storage device associated with at least television and a media player, which are at the second location.

In Claims 6, 16 and 26, which are supported by the disclosure, at least a portion of the transferred stored media may be stored on the storage device associated with at least the television and/or the media player, which are at the second location.

In Claims 7, 17 and 27, which are supported by the disclosure, the presenting of the representation of the stored media may be scheduled within the channel guide based on at least a portion of the stored meta data.

In Claims 8, 18 and 28, which are supported by the disclosure, at least a portion of said meta data may be generated by the storage unit.

In Claims 9, 19 and 29, which are supported by the disclosure, meta data associated with at least the displayed media file may be displayed independent of the displaying of the media file.

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In Claims 10, 20 and 30, which are supported by the disclosure, at least one media file received from the second communication device when the storage unit is coupled to the second communication device may be stored on the storage unit.

In Claim 31, which is supported by the disclosure, the processor of independent Claim 21 further comprises a media exchange software processor.

In Claim 32, which is supported by the disclosure, the processor of independent Claim 21 the second location is a home.

Each of Claims 11-20 is Machine Readable or Beauregard Claims, which correspond to the method Claims 1-10, respectively. See *In re Beauregard*, 35 USPQ2d 1383 (Fed. Cir. 1995). Claims 21-30 are system Claims, each of which corresponds to the method Claims 1-10, respectively. Each of dependent Claims 31 and 32 are systems Claims, which depend from Claim 21.

At least for these reasons, the Applicant believes that Claims 1-32 comprise patentable subject matter, which are believed to be allowable. Accordingly, the Applicant courteously requests that each of Claims 1-32 be allowed. The Applicant reserves the right to argue additional reasons that support the Allowability of all rejected claims should that need arise.

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REJECTION TO THE CLAIMS BASED ON 35 USC §102(e)**Page 4 of the Office Action**

Claims 1-32 are rejected under 35 USC 102(e) as being anticipated by Dougall.

With regard to the anticipation rejections under 102(e), MPEP 2131 states, "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

The Applicant now addresses each Claim rejection.

INDEPENDENT CLAIMS 1, 11 and 21

Regarding the Applicant's independent Claims 1, 11, and 21, the Office Action states:

"Dougall teaches porting information between locations in a communication network [0034], the method comprising: storing media and meta data associated with said stored media on a storage unit coupled to a communication device at a first location; if said storage unit is transferred to a second location and coupled to a second communication device at said second location, presenting a channel guide comprising representations of said stored media on a television [0061] [0069] in said second location [0129] [0023]; and in response to receiving a selection via said presented channel guide [0129], displaying at least one media file corresponding to said received selection on at least one of said television and a media player in said second location [0023]."

In response, the Applicant respectfully asserts that Dougall does not disclose all the limitations found in each of the Applicant's Claims 1, 11 and 21. For example, Dougall does not disclose **"storing media and meta data associated with said stored media on a storage unit coupled to a communication device."** (Emphasis added).

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Furthermore, Dougall does not disclose "presenting [a channel guide] based on said meta data associated with said stored media on said transferred storage unit, when the storage unit is transferred to "a second location and coupled to a second communication device" at the second location. Neither does Dougall disclose "displaying based on said meta data associated with said stored media on said transferred storage unit, at least one media file corresponding to said received selection on at least one of said television and a media player in said second location" in response to "receiving a selection via said presented channel guide."

With regard to the Office Action's references to specific sections of Dougall, the Applicant respectfully submits, Dougall does not teach "porting of information between locations in a communication network" in paragraph [0034]. Additionally, none of paragraphs [0061], [0069], [00129], [0023] in Dougall disclose "if said storage unit is transferred to a second location and coupled to a second communication device at said second location, presenting based on said meta data associated with said stored media on said transferred storage unit, a channel guide comprising representations of said stored media on a television in said second location." Furthermore, neither of paragraphs [0129] and [0023] disclose "in response to receiving a selection via said presented channel guide, displaying based on said meta data associated with said stored media on said transferred storage unit, at least one media file corresponding to said received selection on at least one of said television and a media player in said second location." Instead paragraph [0023] discloses an electronic program guide, and both paragraph [0061] and paragraph [0069] disclose a digital television tuner card. Paragraph [0129] disclose "When an operator of the client node desires to view the available channels and programs, the guide server 850 request the session manager 820 to provide the service announcements." The Applicant respectfully asserts that the subject matter of each of independent Claims 1, 11 and 21 are believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claims and 1, 11, and 21 defines patentable subject matter, and are

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therefore in condition for allowance. The Applicant respectfully requests allowance of Claims 1, 11 and 21.

DEPENDENT CLAIM 2

Regarding Claim 2, the Office Action states, "Dougall teaches wherein said storage unit is a media processing unit [0069]."

In response, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 2 depends from Claim 1, Dougall does not further disclose or teach "wherein said storage unit is a media processing unit." Instead, Paragraph [0069] of Dougall discloses,

Each receiver site 203 has one or more client nodes 240 which may be implemented using a PC compatible computer running zBand™ Client™ software available from SkyStream Networks, Inc™ adapted as described below. In some cases, the client site has one or more router nodes 230, 260. For example, if the signal is received via satellite, the router node 230 can be an Edge Media Router™ available from SkyStream Networks Inc™. In the alternative, the client nodes 240 can have installed therein digital television reception cards, such as the Terracast DAT-100™ or Satellite Express™ available from BroadLogic™, a company located in Milpitas, Calif., for receiving the modulated signal from the head end site 201 directly. The router 260 can be a WAN router for connecting to the return path 204. This router 260 can be of the same design as router 216. In an alternative embodiment, the receiver sites 203 have a different kind of return path 204, such as a wireless return path.

As a result, the Applicant respectfully asserts that the subject matter of dependent

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Claim 2 is believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that dependent Claim 2 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claim 2.

DEPENDENT CLAIM 3

Regarding Claim 3, the Office Action states, "Dougall teaches receiving said stored media at said first location via at least one of a wired and a wireless interface [0064, 0069, 0079]."

In response, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 3 depends from Claim 1, Dougall does not further disclose or teach "receiving said stored media at said first location via at least one of a wired and a wireless interface." Instead, Paragraphs [0064], [0069] and [0079] of Dougall discloses, respectively,

"[0064] The WAN router node 216 can be any commercially available router, such as a 7200TM series router, distributed by Cisco Systems, IncTM, a company located in San Jose, Calif. The WAN can be a publicly accessible WAN, such as the Internet, or a private WAN, such as a virtual private network (VPN) that may include a firewall for security. The return path 204 can also be implemented as a wireless channel, e.g., a satellite channel, a terrestrial channel, etc."

"[0069] Each receiver site 203 has one or more client nodes 240 which may be implemented using a PC compatible computer running zBandTM ClientTM software available from SkyStream Networks, IncTM adapted as described below. In some cases, the client site has one or more router nodes 230, 260. For example, if the signal is

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received via satellite, the router node 230 can be an Edge Media Router™ available from SkyStream Networks Inc™. In the alternative, the client nodes 240 can have installed therein digital television reception cards, such as the Terracast DAT-100™ or Satellite Express™ available from BroadLogic™, a company located in Milpitas, Calif., for receiving the modulated signal from the head end site 201 directly. The router 260 can be a WAN router for connecting to the return path 204. This router 260 can be of the same design as router 216. In an alternative embodiment, the receiver sites 203 have a different kind of return path 204, such as a wireless return path."

"[0079] When necessary, the client nodes 240 can also communicate to a specific network element 205. The client nodes 240 generate packets and either transmit them directly, or via an attached router 260 and the WAN to the appropriate network element 205. For example, if the WAN is the Internet, then TCP/IP or UDP/IP can be used for the communication. The network elements 205 can use a similar process to communicate directly with the client nodes 240. Likewise, if the network elements 205 are located remotely from the best-effort data sources 210, the network elements can use a similar manner for communicating with the best-effort data sources 210. It is also possible to use wireless channels for each of the above communications."

The Applicant respectfully asserts that the subject matter of dependent Claim 3 is believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claim 3 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claim 3.

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DEPENDENT CLAIM 4

Regarding Claim 4, the Office Action stated, "Dougall teaches displaying said meta data information associated with said displayed at least one file. [0029, 0097]"

In response, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 4 depends from Claim 1, Dougall does not further disclose or teach, "displaying said meta data information associated with said displayed at least one file." Instead, Paragraphs [0029], and [0097] of Dougall discloses, respectively,

"[0029] Illustratively, the graphical user interface may also have third and fourth display areas. The third displayable area depicts a hierarchical list of selectable channels. The fourth displayable area depicts properties of a selected channel, including channel information dictating the respective manner of communicating data on the corresponding channel. In response to manual input, each channel listed in the third area is individually selectable. The fourth displayable area displays the properties of whichever one of the channels listed in the third displayable area is currently selected."

"[0097] View 503 shows what the window displays when the operator selects the "Transmit" tab. In this view 503, the operator may enter the channel end point 503-1, the content packetizer 503-2, the network protocol 503-3, whether or not the channel is reliable 503-4, whether or not the channel supports multiplexing 503-5, a subscription type 503-6, a target IP address 503-7, a target IP port 503-8 and a target multicast time to live 503-9. Check box 503-4 may be checked to cause the communication to employ the asynchronous back channel (ABC) extension to the PGM protocol described below. Check box 503-5 can be

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checked to enable the channel to multiplex the data of two or more programs on the same channel. When checked, multiple programs can be specified for contemporaneous communication wherein packets of the specified programs are time division multiplexed on the channel. The subscription types, which can be specified in field 503-6, include "Public," "Private," and "Mandatory". A mandatory subscription requires all client nodes 240 to automatically subscribe to this channel to receive the information carried thereon. A Public subscription enables all client nodes 240 to receive announcements indicating the availability of this channel. However, subscription to the channel is not automatic-client nodes 240 must deliberately subscribe to them so as to receive the best-effort data carried therein. A private subscription is announced to all client nodes 240 but only certain targeted client nodes 240 can display the availability of this channel to their operators. Likewise, only the targeted client nodes 240 can subscribe to this channel. The other fields 503-1, 503-2, 503-3, 503-7, 503-8 and 503-9 are similar to like fields described above so their description is not repeated."

The Applicant respectfully asserts that the subject matter of dependent Claim 4 is believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claim 4 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claim 4.

DEPENDENT CLAIMS 5-6

Regarding Claims 5-6, the Office Action states, "Dougall teaches transferring at least a portion of said stored media from said storage unit to a storage device associated with said at least one of said television and a media player in said second location. [0034, 0030]"

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In response, with regard to Claim 5, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 5 depends from Claim 1, Dougall does not further disclose or teach, "transferring at least a portion of said stored media from said storage unit to a storage device associated with said at least one of said television and a media player in said second location." With regard to Claim 6, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claims 1 and 5. Furthermore, since Claim 6 depends from Claim 5, the latter of which depends from Claim 1, Dougall does not further disclose or teach, "transferring at least a portion of said stored media from said storage unit to a storage device associated with said at least one of said television and a media player in said second location." Instead, Paragraphs [0030], and [0034] of Dougall discloses, respectively,

"[0030] According to another embodiment, a client node capable of using received program information has a memory, communication interface and processor. The communication interface is for receiving programs, where each program comprises a group of one or more files received at the client node via one of the channels. The channels enable the client node to separately store the program information received from each channel in the memory as a separately accessible object. The processor is for executing plural processes, including a broker process and a session manager process. The session manager retrieves from one of the objects corresponding to a particular one of the channels, designated a service channel, information announcing the existence of other channels and a schedule of programs to be received on each of the channels. The session manager issues notifications of each channel to which the client is subscribed. Responsive to the notifications from the session manager, the broker demultiplexes one or more (of the announced) programs from each channel to which the client is subscribed. The broker uses each individual

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file contained in each demultiplexed program as specified by program information carried in the program with the respective file."

"[0034] Program file data may be carried in packets of a certain format. According to one embodiment, the program file data is carried sequence of one or more packets where each packet of the sequence is transferred in a signal from a source node (such as a controller node) to recipient node (such as a client node) in whole or as plural segments. A header of a first packet of the sequence of packets includes a program identifier field containing a program identifier, which uniquely identifies the program of the sequence of packets. The sequence of packets includes a payload containing one or more data triplets, each data triplet including a tag, a length and a value field. The tag in the tag field uniquely identifies the value in the value field and the length in the length field indicates the offset in data words to an immediately following data triplet. A length of zero indicates that no data triplet follows this data triplet. The value fields of the sequence of data triplets contain information for uniquely correlating file data in each packet of the sequence to a respective file of one of the best-effort programs."

The Applicant respectfully asserts that the subject matter of each of dependent Claims 5 and 6 are believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claims 5 and 6 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claims 5 and 6.

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DEPENDENT CLAIM 7

Regarding Claim 7, the Office Action states, "Dougall teaches scheduling ... based on at least a portion of said stored meta data [0024, 0028, 0119]."

In response, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 7 depends from Claim 1, Dougall does not further disclose or teach, "displaying said meta data information associated with said displayed at least one file." Instead, Paragraphs [0019], [0024] and [0028] of Dougall discloses, respectively,

"[0019] Often, it is desirable to schedule the communication of best-effort data which is available or which can be retrieved and readily made available."

"[0024] International Patent Application No. PCT/IB00/00605 teaches a system, employed in Assignee's zBand™ product. In this system, a "scheduler" at the head-end of the broadband communication network schedules the transmission of individual best-effort streams and retrieves them for insertion into the audio-video signal according to the schedule. The best-effort data streams are received and stored at a client device or node, which also employs part of Assignee's zBand™ product. The client node can use the best-effort data stored thereat. For example, if the data is a new "core image" or executable code for operating the client node, the client node executes the code. If the data is a video file, the video file is made available for playback by an operator of the client node."

"[0028] An operator console may be provided with a graphical user interface, e.g., for scheduling jobs, defining programs and other tasks. According to one embodiment, the graphical user interface includes a display screen having a first displayable area depicting a time line and a second displayable area, adjacent to the first displayable area, depicting

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plural tabbed panes. Each tabbed pane corresponds to a channel and has a portion, which is always visible and selectable to cause the remainder of the respective tabbed pane to become visible. When a tabbed pane becomes visible, it occludes other portions of other tabbed panes. Each tabbed pane, when selected, depicts time intervals of a certain scale. The visible tabbed pane depicts one or more jobs scheduled for execution as solid lines extending over one or more of the time intervals of the respective pane to represent a time during which the job executes."

The Applicant respectfully asserts that the subject matter of dependent Claim 7 is believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claim 7 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claim 7.

DEPENDENT CLAIM 8

Regarding Claim 8, the Office Action states, "Dougall teaches generating at least a portion of said meta data by said storage unit [0088]."

In response, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 7 depends from Claim 1, Dougall does not further disclose or teach, "generating at least a portion of said meta data by said storage unit." Instead, Paragraph [0088] of Dougall discloses,

[0088] The database 310 is implemented using any high capacity storage device, such as a set of one or more disks and appropriate server hardware. Again, the database module 310 can be incorporated into the same PC compatible computer as other elements, e.g., operator console 330, resource manager 340 and/or primary controller 350.

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The Applicant respectfully asserts that the subject matter dependent Claim 8 is believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claim 8 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claim 8.

DEPENDENT CLAIMS 9-10

Regarding Claims 9-10, 12-20 and 22-32, the Office Action states, "these claims are similar in scope to the rejected claims above and are therefore rejected as set forth above.

In response, with regard to claim 9, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 9 depends from Claim 1, Dougall does not further disclose or teach, "displaying meta data associated with said displayed at least one media file independent of said displaying of said at least one media file." Furthermore, the Applicant respectfully refutes the Examiner's implied assertion that at least one of paragraphs [0023], [0024], [0028], [0030], [0034], [0061], [0064], [0069], [0079], [0088], [0097], [0119], and/or [0129] teaches or otherwise disclose "displaying meta data associated with said displayed at least one media file independent of said displaying of said at least one media file."

In response, with regard to claim 10, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 1. Furthermore, since Claim 10 depends from Claim 1, Dougall does not further disclose or teach, "storing on said storage unit, at least one media file received from said second communication device when said storage unit is coupled to said second communication device." Furthermore, the Applicant respectfully refutes the Examiner's implied assertion that at least one of paragraphs [0023], [0024], [0028], [0030], [0034], [0061], [0064], [0069], [0079], [0088], [0097], [0119], and/or [0129] teaches or otherwise disclose "storing on said storage unit, at least one media file received from said second communication device when said storage unit is coupled to said second communication device."

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The Applicant respectfully asserts that the subject matter of each of dependent Claims 9 and 10 are believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that Claims 9 and 10 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claims 9 and 10.

DEPENDENT CLAIMS 12-20

Regarding Claims 12-20, the Office Action states, "these claims are similar in scope to the rejected claims above and are therefore rejected as set forth above."

In response, with regard to dependent claims 12-20, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 11. Furthermore, since the dependent Claims 12-20 depends either directly or indirectly from Claim 11, Dougall does not further disclose or teach, the corresponding limitations found in each of the dependent Claims 12-20. Furthermore, the Applicant respectfully refutes the Examiner's Implied assertion that at least on of paragraphs [0023], [0024], [0028], [0030], [0034], [0061], [0064], [0069], [0079], [0088], [0097], [0119], and/or [0129] teaches or otherwise disclose the corresponding limitation found in each of the dependent Claims 12-20.

The Applicant respectfully asserts that the subject matter of each of dependent Claims 12-20 are believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that each of the dependent Claims 12-20 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claims 12-20.

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DEPENDENT CLAIMS 22-32

Regarding Claims 22-32, the Office Action states, "these claims are similar in scope to the rejected claims above and are therefore rejected as set forth above."

In response, with regard to dependent claims 22-32, the Applicant respectfully asserts that Dougall does not contain all the limitations of Claim 21. Furthermore, since the dependent Claims 22-32 depends either directly or indirectly from Claim 21, Dougall does not further disclose or teach, the corresponding limitations found in each of the dependent Claims 22-32. Furthermore, the Applicant respectfully refutes the Examiner's implied assertion that at least one of paragraphs [0023], [0024], [0028], [0030], [0034], [0061], [0064], [0069], [0079], [0088], [0097], [0119], and/or [0129] teaches or otherwise disclose the corresponding limitation found in each of the dependent Claims 22-32.

The Applicant respectfully asserts that the subject matter of each of dependent Claims 22-32 are believed to be allowable, and furthermore comprise subject matter that differs substantially from that which is disclosed in Dougall.

Accordingly, at least for the reasons cited above, the Applicant respectfully asserts that each of the dependent Claims 22-32 defines patentable subject matter, and is therefore in condition for allowance. The Applicant respectfully requests allowance of Claims 22-32.

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CONCLUSION

Based on the foregoing, the Applicant believes that all Claims 1-32 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8191.

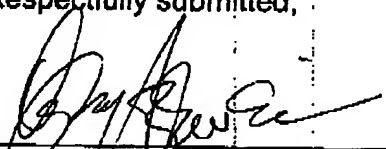
The Applicant reserves the right to argue additional reasons that support the Allowability of all rejected claims should that need arise.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: July 25, 2006


Ognyan Beremski, Esq.
Registration No. 51,458
Attorney for Applicant(s)

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8000

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